

Claims 1 to 21 remain in this application as amended. Claim 1, 2 and 18-21 stand withdrawn.

Claims 3 -17 stand rejected under 35 U.S.C. 103 as being obvious to one skilled in the art over the disclosure in Nolen (US 5,205,064) and Wigton et al. (5,813,166) in view of Vander Meer et al. (US 5,721,274). This rejection is respectfully traversed. The combination of disclosure in no way renders obvious the claimed invention.

Applicant's claimed invention relates to a method off attracting **mosquitoes** in a three-dimensional space by releasing into that space an attracting effective amount of at least one 1-alk~~yn~~-3-ol of a formula specified in claim 3. Such 1-alkyn-3-ols attractants include 1-oct~~yn~~-3-ol.

While the disclosure in both Nolen relates to a device and method for attracting mosquitoes to an electric grid so they can be killed, the device and method of Nolen discloses only using carbon dioxide and octenol (i.e., 1-oct~~en~~-3-ol) as the chemical for attracting mosquitoes. There is no disclosure, teaching or motivation to one skilled in the art to employ a 1-alk~~yn~~-3ol to attract mosquitoes.

The Wigton et al. patent relates to a system for **preventing** mosquitoes from entering an area. The Wigton et al. system employs the slow release of octenol (i.e., 1-oct~~en~~-3ol). Like the aforementioned Nolen patent the Wigton et al. patent contains no disclosure, teaching or motivation to one skilled in the art to employ a 1-alk~~yn~~-3ol to attract mosquitoes.

The deficiencies in the Nolen and Wigton et al disclosures are not cured by the disclosure in the Vander Meer et al. patent. The Vander Meer et al. patent is directed to methods and compositions for **repelling fire ants which are crawling insects**. The Vander Meer at al patent discloses a wide range of compounds for this purpose including 1-octyn-3-ol at column 10, line 33. However, this patent disclosure would teach or provide the basis for

motivation to one skilled in the art that 1-octyn-3ol would be effective in **attracting mosquitoes**. The Vander Meer et al. patent is totally silent as to the use of any of their repellent compounds for anything other than fire ants. The disclosure in Vander Meer et al. does not even suggest their use with other crawling insects, let alone **flying insects such as mosquitoes**. Nothing in Vander Meer et al. teaches or renders obvious that 1-alkyn-3-ols are able to attract mosquitoes. The only suggestion of that comes from the disclosure in the present application, and use of that disclosure of the present applicants is erroneous and impermissible hindsight reconstruction.

The lack of any motivation to combine the reference disclosures defeats any basis for establishing a *prima facie* case for obviousness and would require withdrawal of any 35 U.S.C. 103 obviousness rejection. In re Dembiczak, 50 USPQ 2d, 1614 (Fed. Cir. 1999). As stated by the court in the Dembiczak case, "Broad conclusionary statements regarding the teaching of multiple references standing alone are not evidence" (of unobviousness) *Ibid* at page 1617. The Office Action by hindsight erroneously attempts to make the broad conclusionary statements that the references teach all the limitation of the claims. As shown by the foregoing analysis of the disclosures in their context, the references clearly do not teach the use of a 1-alkyn-3-ol attractant in the method of Applicants' claims.. The court has consistently rejected such broad conclusionary statements as providing any "evidence" of obviousness. Nothing in the cited references specifically leads one skilled in the art to Applicants' claimed invention. Rather, the impermissible hindsight of Applicants' disclosure has been utilized to piece together the disclosure to read into them specifics that are not there in an attempt to arrive at the claimed invention. Thus, there is no *prima facie* case for obviousness established by the reference disclosures, and the rejection of claims 3 to 17 over these reference disclosures should be withdrawn.

Moreover, even if the reference disclosure had established a *prima facie* case for obviousness (which they clearly do not do for the reasons stated), that case of *prima facie* obviousness is totally rebutted by the data presented in Applicant's disclosure. Those results demonstrate that the results obtained with the use of a 1-alkyn-3-ol (such as 1-octyn-3-ol) are unexpectedly superior to those obtained with a 1-alken-3-ol (such as 1-octen-3-ol of the

Nolen and Wigton et al. patents). In the Example at pages 10 and 11 of Applicant's specification, it is shown that under the same test conditions 1-octyn-3-ol attracted over 71% more mosquitoes than the 1-octen-3-ol (octenol) of the Nolen and Wigton et al patents. Such results are totally unexpected and not obvious from any prior art. Such evidence, presented in Applicants' specification, must be considered and given its proper weight. In re Soni, 54 F. 3d 746, 750, 34 USPQ 2d 1684, 1687 (Fed. Cir. 1995). In re Dillon, 919 F. 2d 688, 692-93, 16 USPQ 2d 1897, 1901 (Fed. Cir. 1990), *in banc*, *cert. denied*, 500 US 904 (1991). When this data is given its proper consideration, as it must, the unobviousness of the claimed invention over the prior art disclosures is clearly demonstrated. Therefore, the USPTO is respectfully requested to reconsider and withdraw the 35 U.S.C. 103 rejection of claims 3-17 over Nolen and Wigton et al. in view of Vander Meer et al.

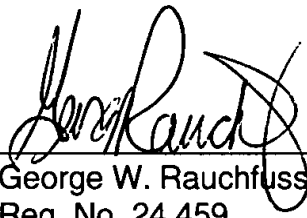
The Office Action also makes final the restriction between the following three groups of allegedly distinct inventions:

- (a) the compositions of claims 1 and 2;
- (b) the method of claims 3-17; and
- (c) the articles of claims 18-21.

Applicants previously traversed this restriction requirement on the basis that the USPTO contention that the compositions of claims 1 and 2 could be used in other articles, such as feeds, is totally unsupported. In the May 9, 2002 Office Action, the USPTO does not dispute the correctness of Applicants position. Rather, the USPTO irrelevantly contends that for the USPTO to provide such support for their position would require a burdensome search or experimentation. Such a position by the USPTO is totally irrelevant and non-responsive to Applicant's contention. The restriction requirement must have some factual basis for the grounds upon which it is based. Here there is absolutely no factual basis provided to support the USPTO's alleged grounds for requiring restriction and, therefore, the restriction requirement is erroneous. Withdrawal of the restriction requirement is respectfully requested. Rejoinder of claims 1, 2 and 18-21 with the allowable claims 3-17 is respectfully requested.

It is respectfully submitted that this response is a full and complete response to the Office Action of May 9, 2002 and it is further respectfully submitted that all the elected claims are allowable over the prior art for at least the reasons indicated.. An early indication of their allowability is earnestly solicited.

Respectfully submitted,

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